

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9410 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NANIYO GANPAT PATIL

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR UA TRIVEDI, AGP for Respondent No. 2, 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 09/12/96

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order of detention dated April 25, 1996 passed by the Commissioner of Police, Surat in exercise of powers under sub-section (2) of section-3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act, 1985').

2. The order of detention has been challenged on number of grounds. However, this petition can be disposed of only on the single ground that there is a delay in deciding the representation made by the petitioner which has infringed the rights of the petitioner guaranteed under Art. 22 (5) of the Constitution of India.

3. It is submitted by the learned counsel that the petitioner has made representation dated 04/11/96 addressed to the Chief Minister by Registered Post A.D. However, the said representation has not been decided. Even if it is decided, the result of the same has not yet been communicated to the petitioner. When the matter was taken up for final hearing on December 03, 1996, it was stated by Mr UA Trivedi, ld. AGP that no such representation has been received in the Home Department. In view of this, the direction was given that an affidavit from the Secretariat of the Chief Minister may be filed, stating as to whether the representation was received or not and if it was received, what has happened to that.

4. Today an affidavit has been filed by Mr. Raj Gopal, Deputy Secretary, Home Department, Sachivalaya, Gandhinagar. It is stated that the representation dated 04/11/1996 addressed to the Chief Minister was received by the office of the Chief Minister, was sent to the Home Department on 05/12/1996 and the representation was then submitted alongwith the file of the detainee for consideration of the Additional Chief Secretary (Home) on 05/12/1996. The Additional Chief Secretary (Home) in turn has considered the same and rejected the representation on 06/12/1996 and the decision thereon was conveyed to the detainee under communication dated 06/12/1996 through the Jail Authority.

5. In spite of the clear direction of this Court, no affidavit has been filed from the Secretariat of the Chief Minister. There is absolutely no explanation as to why the representation remained pending with the office of the Chief Minister during the period from 05/11/1996 to 05/12/1996. Mr UA Trivedi, ld. AGP has of course orally submitted that the representation was in fact despatched on 8/11/1996 and the same was received in the office of the Chief Minister on 13/11/1996. Even if these facts are taken to be true, there is an unexplained delay for the period from 13/11/96 to 05/12/96. The unexplained delay in deciding the representation is fatal and vitiates the impugned order of detention.

6. In view of the aforesaid, this Special Civil Application is allowed. The impugned order of detention dated 25/04/1996 is quashed and set aside. The petitioner detenue shall be released forthwith, if he is not required in any other case. Rule is made absolute accordingly.

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